

The opinion in support of the decision being entered today was **not** written for publication and is **not** binding precedent of the Board.

Paper No. 19

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte CLAUDE TIHON

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Appeal No. 2000-0651  
Application No. 09/024,732

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ON BRIEF

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Before COHEN, FRANKFORT, and McQUADE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 9 through 16. These claims constitute all of the claims remaining in the application.

Appellant's invention pertains to a urethral drain. A basic understanding of the invention can be derived from a

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reading of exemplary claim 9, a copy of which appears in the  
APPENDIX "A" of the main brief (Paper No. 15).

As evidence of obviousness, the examiner has applied the  
documents listed below:

Carter	4,713,049	Dec. 15, 1987
Sachse	5,407,435	Apr. 18, 1995

The following rejection is before us for review.

Claims 9 through 16 stand rejected under 35 U.S.C. §  
103(a) as being unpatentable over Sachse in view of Carter.

The full text of the examiner's rejection and response to  
the argument presented by appellant appears in the answer  
(Paper No. 16), while the complete statement of appellant's  
argument can be found in the main and reply briefs (Paper Nos.  
15 and 17).

OPINION

In reaching our conclusion on the obviousness issue raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied teachings,<sup>1</sup> and the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determination which follows.

We cannot sustain the examiner's rejection of claims 9 through 16.

Claim 9, the sole independent claim in the application, is drawn to a urethral drain apparatus comprising, inter alia,

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<sup>1</sup> In our evaluation of the applied prior art, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

an elongated, flexible, tubular drain body member having a proximal end, a closed distal end, and a lumen extending therebetween, the tubular drain body member being of a length such that placement of a distal end portion into a patient's urinary bladder will leave a proximal end portion extending beyond the urethral meatus, the distal end portion being preformed so that when unconstrained it forms a bladder retention coil lying in a plane extending at a perpendicular angle to<sup>2</sup> a longitudinal axis of the tubular drain body member, the distal end portion further including at least one aperture extending from a peripheral surface of the tubular drain body member to the lumen, and a unitary tubular stiffening device insertable into the lumen and being sufficiently rigid to render the bladder retention coil rectilinear to facilitate insertion of the tubular drain body member into the patient's urethra, the tubular stiffening device having an open distal end and an unobstructed internal lumen for permitting urine to flow therethrough as a signal to

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<sup>2</sup> Obviously, claim 9, line 8, omits the word --to-- following the word "angle". This obvious informality should be remedied during any further prosecution before the examiner.

provide an indication when the distal end portion of the tubular drain body member has been inserted into the patient's urinary bladder, removal of the tubular stiffening device following receipt of the signal allowing the distal end portion of the tubular drain body member to reform the bladder retention coil.

We turn now to the applied Sachse and Carter patents.

Sachse teaches a ureter tube for splinting a ureter and Carter discloses a ureteral stent. Notwithstanding the dispute between appellant and the examiner relative to the examiner's view that the references teach devices capable of performing as a urethral drain apparatus, as explained below, it is quite apparent to us that independent claim 9 clearly recites features that we discern would not have been obvious based upon the evidence before us.

We appreciate that the Sachse patent makes reference to ureter tubes, otherwise known as "pig tail" tubes because of their curved shape, i.e., because of the inherent curvature in

their tips and ends (column 1, lines 8 through 18). However, notwithstanding the mentioning of the term "pig tail" as above, we do not perceive that one having ordinary skill in the art would have discerned from either the Sachse or the Carter documents a teaching of a bladder retention coil lying in a plane extending at a perpendicular angle (to) a longitudinal axis of a tubular drain body as now claimed, i.e., a bladder retention coil lying in a plane orthogonal to the longitudinal axis, consistent with the underlying disclosure of the present application.

Claim 9 also requires a "unitary<sup>3</sup> tubular stiffening device" sufficiently rigid to render the bladder retention coil rectilinear and having an open distal end and an unobstructed internal lumen for permitting urine flow therethrough as a signal indicating that a distal end portion has been inserted into a patient's urinary bladder. Akin to

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<sup>3</sup> The word "unitary" relates to a unit, with a "unit" being a single quantity or an undivided whole. Webster's New Collegiate Dictionary, G. & C. Merriam Company, Springfield, Massachusetts, 1979. This definition is consistent with the disclosure in appellant's application of a single tube (tubular) stiffener 28.

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the view of appellant, we are of the opinion that one having ordinary skill in this art would have comprehended each of Sachse and Carter as revealing stiffening devices that are solid mandrins or cores or that are combined tubular and solid mandrin or core devices. Irrespective of the noted alternatives, a solid mandrin or core effects straightening and reforming of a ureter tube in the applied teachings. Thus, the applied teachings would not have been suggestive of a unitary tubular stiffening device, as set forth in claim 9.

Since the evidence relied upon by the examiner lacks a teaching or suggestion of features of the claimed urethral drain apparatus, as above, we cannot sustain the rejection of appellant's claims under 35 U.S.C. § 103(a).

The decision of the examiner is reversed.

REVERSED

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IRWIN CHARLES COHEN	)	
Administrative Patent Judge	)	
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	)	
	)	BOARD OF PATENT
CHARLES E. FRANKFORT	)	APPEALS
Administrative Patent Judge	)	AND
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